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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,510	07/03/2003	Harrison G. Purvis	59851	4795
27975	7590	03/10/2006	EXAMINER	
ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST P.A. 1401 CITRUS CENTER 255 SOUTH ORANGE AVENUE P.O. BOX 3791 ORLANDO, FL 32802-3791			NGUYEN, CHI Q	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/613,510	Applicant(s) PURVIS ET AL.	
	Examiner Chi Q. Nguyen	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

This Office action is in response to the Applicant's remarks filed on 12/29/2005.

The replacement sheet of Figure 2 filed on 12/29/2005 has been received and recorded.

Claims 1-18, and 35-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewis (US 5,570,559).

In regard claim 1, Lewis teaches safety guardrail or fall arrestor comprising a plurality of end post supports each comprising a U-shaped body with a base 50/52, two arms 40, 112(see figure 5). The U-shaped body having a first segment 40 for removably fastening to an end of a respective pitched roof member and having a second segment 50 extending outwardly with a gap there between two arms, a post receiver 74 connected to an upper end of the second segment of the body, and a stabilizer 80 carried by the body, a respective post 26 carried by the post receiver 74 of each end post support, and rail members 28 connected between adjacent posts (see figs. 1-5).

In regard claim 2, Lewis teaches the claimed invention as stated, wherein the first segment of the body has a plurality of openings therein 44 (see fig. 2).

In regard claim 3, Lewis teaches the claimed invention as stated, wherein said stabilizer comprises an elongate stabilizer member 80 connected to the body (see fig. 2).

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In regard claim 4, Lewis teaches the claimed invention as stated, wherein a bolt 96 serves as a transverse stabilizer member connected to an end of said elongate stabilizer member 80 (see fig. 2).

In regard claim 5, Lewis teaches the claimed invention as stated, wherein further comprising a kick member bracket 60 carried by the upper end of the second segment of the body (see fig. 3).

In regard claim 6, Lewis teaches the claimed invention as stated, wherein the other side of the roof structure constitutes the similar structures as claimed in claim 1: a plurality of gable post supports 30, each comprising a body having a first end 40, a post receiver 74, a respective post 26 carried by the post receiver 74 of each gable post support; rail members 28 connected between adjacent posts.

In regard claim 7, Lewis teaches the claimed invention as stated, wherein the body comprises a gable plate (where 30 points to) and an elongate gable member 40 extending outwardly from said gable plate (see figs. 1-3).

In regard claim 8, Lewis teaches the claimed invention as stated; wherein said post receiver 74 is selectively positionable along said elongate gable member.

In regard claim 9, Lewis teaches the claimed invention as stated; wherein each gable post support further comprises a stabilizer 112 (fig. 5) carried by a second end of the body.

In regard claim 10, Lewis teaches the claimed invention as stated, wherein further comprising a plurality of holes 90 on the second end of the body function as

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stabilizer receiver for adjustably receiving said elongate stabilizer member therein (see figure 5).

In regard claim 11, Lewis teaches the claimed invention as stated, wherein bolt 116 (see figure 5) functions as a transverse stabilizer connected to end of said elongate stabilizer member 112.

In regard claim 12, see rejections of claim 1 above.

In regard claim 13, see rejections of claim 2 above.

In regard claim 14, see rejections of claim 3 above.

In regard claims 15-18, see rejections of claims 6-11.

In regard claim 35, see rejections of claim 1 above.

In regard claim 36, see rejections of claim 2 above.

In regard claim 37, see rejections of claim 3 above.

In regard claim 38, see rejections of claim 4 above.

In regard claim 39, see rejections of claim 5 above.

In regard claim 40, see rejections of claim 6 above.

In regard claim 41, see rejections of claim 7 above.

In regard claim 42, see rejections of claim 8 above.

In regard claim 43, see rejections of claim 9 above.

In regard claim 44, see rejections of claim 10 above.

In regard claim 45, see rejections of claim 11 above.

Claims 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by McLaughlin et al. (US 3,995,833).

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In regard claim 15, McLaughlin teaches a gable post support comprising a body 122 having a first end F (see attached figure 5), a post receiver 80a carried by said body 122, and a stabilizer 30 carried by a second end S of the body (see figures 5-6).

In regard claims 16, 17, McLaughlin teaches the claimed invention as stated, wherein said body comprises a gable plate (first end F), and an elongate gable member (second end S) extending outwardly from said gable plate.

In regard claim 18, McLaughlin teaches the claimed invention as stated, wherein said stabilizer comprises an elongate stabilizer receiver 30, and a stabilizer receiver 24 connected to said body 122 (see figure 5).

Claims 19-34, 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis.

In regard method claims, Lewis teaches the claimed structural invention as stated. However, Lewis does not teach specifically the method of installing a guardrail system, which comprises post support and gable support structures, examiner considers this would have been obvious matter of setting up device because for installing the guardrail, one would must obviously position a plurality of end post supports along a roof end pitch or where installer would be used and fastening with fasteners through holes; secure a stabilizer against the building structure, secure one end of the guardrail to the roofing member, insert posts into post receivers on the other

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end of the guardrail, connect rails onto the posts; Lewis would be motivated to follow these steps to facilitate assembly to have a guardrail for working on the roof safety.

### ***Response to Arguments***

Applicant's arguments filed 12/29/2005 have been fully considered but they are not persuasive: In regard the applicant argues that the prior art (Lewis 5,570,559) does not teach an end post support device for fastening to an end of a respective pitched roof member instead of the device that attaches to a wall. The examiner does not agree with the applicant's argument because the prior art teaches the similar structural elements to the applicant's claimed invention as set forth above although the device utilized differently (e.g. fastening to wall or roof). That would considers the intended use of the device and thus it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2, USPQ 2d 1647 (1987).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (571) 272-6842. The examiner's right fax number is (571) 273-6847.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

3/1/2006

  
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